

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

LYNN O.,

Claimant,

OAH No. 2011070292

vs.

NORTH BAY REGIONAL CENTER,

Service Agency.

DECISION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter on August 24, 2011, in Napa, California.

Claimant Lynn O. was represented by her mother and her stepfather.

North Bay Regional Center was represented by Kristin Casey, Attorney at Law.

The matter was submitted for decision on August 24, 2011.

ISSUE

Has North Bay Regional Center erred in determining to terminate the respite services it has been providing to claimant because she is now receiving protective supervision through In-Home Supportive Services?

FACTUAL FINDINGS

1. Claimant is a 22-year-old consumer of North Bay Regional Center. She lives at home with her mother, her stepfather, and more recently, her sister.

2. Claimant has Angelman's Syndrome. She is mentally retarded and nonverbal. She has a history of seizures for which she takes medication. She has an unsteady gait and falls easily. She uses a wheelchair when in the community. Claimant is dependent with all self-care tasks, and is only partially toilet trained. She is unable to prepare food. She lacks safety awareness, and requires constant supervision.

3. Claimant has a happy disposition but her behaviors can be challenging. She becomes angry and frustrated easily, and will tantrum. Her behavior has gotten worse with the arrival of her younger sister in the home.

4. Claimant's mother and her step-father are her primary caregivers. Claimant's father is not involved in her life. Claimant's mother and stepfather both work outside of the home and arrive home late in the day, about 8:00 p.m.

5. Respite and daycare are identified as supports in the residential objective of claimant's June 2009 Individual Program Plan. Because of the severity of her needs, service agency granted an exemption as authorized by Welfare and Institutions Code section 4686.5, and authorized respite at the rate of up to 105 hours per quarter effective July 1, 2009, through June 30, 2010. The respite authorization was extended in the May 5, 2010 addendum for the period of June 1, 2010, through May 31, 2011.

6. Claimant graduated from high school in June 2011, and started a new day program. She is picked up from home at 7:00 a.m., and travels by bus to her program, which ends at 2:00 p.m. Claimant is picked up by a daycare worker who stays with her until her parents arrive at home around 8:00 p.m.

7. Claimant receives In-Home Support Services (IHSS) through the Department of Social Services. Claimant's mother provides all the IHSS services that are funded for claimant. Effective May 5, 2011, claimant's IHSS award was expanded to include Protective Supervision, at the rate of 45.03 hours per week.

8. In an IPP addendum dated June 21, 2011, the residential objective of the IPP was amended to include the following language:

About a year ago, there was a discussion of out of home placement due to her care needs. But [claimant] is very attached to the family and they to her. Therefore a decision was made that instead of placement the need for care and supervision could be met through the use of day care and respite which were renewed last year. During this year, the family began to receive IHSS . . . of which 45 hours a week are protective supervision hours. [Claimant's] mother performs most of the IHSS hours. NBRC determines that the protective supervision hours can be

used to hire a worker to meet the need for respite. NBRC to send Notice of Action to cancel funding for respite since it was determined by NBRC that the need can be met through the use of IHSS. . . .

9. A notice of proposed action was issued on June 28, 2011. This appeal followed.

NBRC Purchase of Service Policies

10. Purchase Memo 2301 of the North Bay Regional Center Procedures Manual governs general requests for purchases of service. It provides, among other things, that NBRC will not expend funds for services available through other public resources, citing Welfare and Institutions Code section 4659.

11. Purchase Memo 2315 governs the purchase of respite service for adult children living in the home.

In the section on limitations, Purchase Memo 2315 provides the following regarding IHSS:

Individuals who can establish eligibility for In-Home Support Services (IHSS) through the County Department of Social Services (DSS) either through direct payment or through the services of an IHSS worker or without a potential share of cost requirement are not eligible for any NBRC services that duplicate those covered by IHSS.

In the section on alternative funding resources, Procedure Memo 2315 provides:

Funding options to be explored but are not limited to: In-Home Support Services (IHSS) (when the approved IHSS hours are consistent with a specific service identified in the client's IPP/IFSP)

12. Ellen McBride is a Case Manager Supervisor of the Adult Services Section of NBRC. McBride testified that NBRC considers IHSS Protective Supervision to be a generic resource for in-home respite, because the parent has the option to hire someone to provide the Protective Supervision which would provide a break in care for the parent. NBRC does not consider IHSS Protective Supervision to be a generic resource for out-of-home respite.

Discussion

13. Claimant seeks to continue receiving 105 hours of respite per quarter. Claimant's mother did not understand from IHSS that Protective Supervision was considered respite for her. She and her husband use respite for a weekend break from claimant's care and supervision, which can be demanding. Claimant's behavior issues have increased since the arrival of her sister in the home.

14. Claimant's parents were not aware of out-of-home respite services, which is something they will pursue with Client Program Coordinator Tanya Barreto. And the parents will pursue also pursue available behavioral services in light of the recent changes in claimant's behavior.

LEGAL CONCLUSIONS

1. In the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, § 4500 et seq.), the State of California has accepted responsibility for persons with developmental disabilities. The Lanterman Act mandates that an "array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream life of the community." (Welf. & Inst. Code, § 4501.) Regional centers are charged with the responsibility of carrying out the state's responsibilities to the developmentally disabled under the Lanterman Act. (Welf. & Inst. Code, § 4620, subd. (a).) The Lanterman Act directs regional centers to develop and implement an IPP for each individual who is eligible for regional center services. (Welf. & Inst. Code, § 4646.) The IPP states the consumer's goals and objectives and delineates the services and supports needed by the consumer. (Welf. & Inst. Code, §§ 4646, 4646.5, & 4648.)

2. While regional centers have a duty to provide a wide array of services to implement the goals and objectives of the IPP, they are directed by the Legislature to provide services in a cost-effective manner. (Welf. & Inst. Code, § 4646, subd. (a).) In addition, regional centers may not fund services that are available through another public agency. This prohibition, contained in Welfare and Institutions Code section 4648, subdivision (a)(8), provides:

Regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

Toward this end, regional centers must "identify and pursue all possible sources of funding for consumers receiving regional center services." (Welf. & Inst. Code, § 4659,

subd. (a).) In addition, Welfare and Institutions Code section 4646.4 requires regional centers when purchasing services and supports to ensure, among other things, the following:

- (1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.
- (2) Utilization of generic services and supports when appropriate.

3. Respite is one type of service provided to consumers. It is defined under Welfare and Institutions Code section 4690.2, subdivision (a), as follows:

"In-home respite services" means intermittent or regularly scheduled temporary nonmedical care and supervision provided in the client's own home, for a regional center client who resides with a family member. These services are designed to do all of the following:

- (1) Assist family members in maintaining the client at home.
- (2) Provide appropriate care and supervision to ensure the client's safety in the absence of family members.
- (3) Relieve family members from the constantly demanding responsibility of caring for the client.
- (4) Attend to the client's basic self-help needs and other activities of daily living including interaction, socialization, and continuation of usual daily routines which would ordinarily be performed by the family members.

4. As set forth above, NBRC is required by law to consider generic resources and to follow its Purchase of Service policies when providing services and supports. (Welf. & Inst. Code, § 4646.4.) It is determined that NBRC has properly followed its Purchase of Service policies and the Lanterman Act in concluding to terminate the provision of respite to claimant in light of her receipt of IHSS Protective Supervision.

IHSS Protective Supervision provides funding to provide direct care and supervision for claimant. This funding can be utilized to hire a third party to perform these services. The funding thus serves the dual purpose of providing claimant with supervision while also providing her mother a break from caring for her. Inasmuch as the funding of IHSS Protective Supervision also serves claimant's mother's need for respite, it constitutes an

alternative and generic source of funding for respite. The fact that claimant's mother chooses to provide IHSS Protective Supervision instead of hiring a third party to do so does not alter this analysis. Claimant's mother is entitled to provide all of the funded IHSS Protective Supervision for claimant. But if she needs a break from caring for claimant, she must utilize IHSS protective supervision as a resource for this rather than respite funded by NBRC.

5. Consideration has been given to the limitation on the use of IHSS as a generic resource for respite set forth in Welfare and Institutions Code section 4686.5, subdivision (5). This section provides:

A regional center shall only consider in-home supportive services a generic resource when the approved amount of in-home supportive services meets the respite need as identified in the consumer's [IPP]

Claimant receives 45.03 hours of IHSS Protective Supervision per week, which is roughly 180 hours per month. The most recent identified respite need for claimant is 105 hours per quarter. IHSS Protective Supervision clearly exceeds claimant's respite need. It is appropriate for NBRC to consider IHSS Protective Supervision as a generic resource, and to discontinue provision of respite to claimant.

ORDER

The appeal of Lynn O. seeking continued funding of respite is denied.

DATED: August 31, 2011

MELISSA G. CROWELL
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Judicial review of this decision may be sought in a court of competent jurisdiction within 90 days.